ARC 9892B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249L.4(4), the Department of Human Services amends Chapter 36, "Facility Assessments," Iowa Administrative Code.

These amendments:

• Change a condition affecting the amount of the quality assurance assessment fee. This change is necessary to satisfy statistical tests required for states that choose to have different categories of providers pay a different level of assessment, as directed in 42 CFR 433.68(e)(2). In Iowa, three categories of facilities are assessed a fee of $1 per non-Medicare patient day, while the rest are assessed $5.26 per non-Medicare patient day. The amendments change the criteria for one of these categories, shifting facilities that have 47 to 50 certified beds from paying the $1 fee to paying the $5.26 fee (unless they qualify for the $1 fee on another basis).

• Clarify when the assessment level will be determined. The current rules do not address the determination of the assessment level. The practice has been to determine assessments quarterly, based on the number of beds and other factors on the first day of the quarter. The amendments provide that beginning July 1, 2012, the assessment level for each nursing facility shall be determined on a state fiscal year basis, effective for the period July 1 through June 30 of the following calendar year. The number of licensed beds on file with the Department of Inspection and Appeals as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year, beginning on July 1. Continuing care retirement center designation and the annual number of Iowa Medicaid patient days will also be determined as of May 1 for the following state fiscal year.

• Clarify that inadvertence or oversight does not constitute good cause for failure to pay the nursing facility quality assurance assessment timely.

• Update legal references.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9731B**. Though not stated in the Notice of Intended Action, the Department separately informed nursing facility organizations that it intended to implement all changes retroactive to July 1, 2011, concurrent with rate adjustments based on new cost reports that were implemented on that date. Due to the rate adjustment and to facilities that have moved below the 50-bed threshold, redistribution of the assessment categories effective July 1, 2011, was required to meet federal requirements and obtain federal approval of the new payment rates.

The Department received a comment from the Iowa Association of Homes and Services for the Aging concerning the Department's intent to retroactively implement the requirement that the number of facility beds would be counted as of May 1 each year for the following fiscal year. Facilities are used to having changes in bed count affect the assessment rate effective on the first day of the quarter following the bed count change. If that procedure is changed retroactively, facilities that lowered their bed count before the rule was adopted would not see the effect of those changes on their assessment rate until July 1, 2012.

The Department agrees that this aspect of the amendments should not be implemented retroactively. Doing so would negatively affect some providers who reduced their number of beds before the rule change and is not required by federal law. Therefore, the Department will continue to allow assessment level changes on the first day of the quarter until July 2012.

As a result, the Department has made the following changes to the amendments as published under Notice of Intended Action:

• Added the effective date of July 1, 2012, to the introductory paragraph of subrule 36.6(2).

• Added the effective date of July 1, 2011, to the first sentence of paragraph 36.6(2)"a."

• Added the effective date of July 1, 2012, to the second sentence of paragraph 36.6(2)"a" along with reference to application of the bed level as of May 1 for determining the facility's assessment level for the following state fiscal year.

• Added similar sentences to paragraphs 36.6(2)"b" and 36.6(2)"c," stating that effective July 1, 2012, the status of the criterion distinguishing that category of facility will be used to determine the facility's assessment level for the following state fiscal year.

The net effect of these changes is that any facility that had more than 46 beds on July 1, 2011, will not qualify for the fee of $1 based on the number of beds for the quarter from July to September 2011. If a facility reduces beds to 46 or fewer between July 1, 2011, and March 31, 2012, the fee will change to $1 effective the first day of the quarter following the change. This procedure follows the current Iowa Medicaid Enterprise procedures for recognizing bed capacity changes.

Beginning with assessments for July 1, 2012, and thereafter, a facility's bed capacity (as well as continuing care retirement community status and Iowa Medicaid patient days) on May 1 of each year will be used to determine the facility's assessment level for the state fiscal year beginning on the following July 1, in accordance with the changes to subrule 36.6(2).

The Council on Human Services adopted these amendments on November 9, 2011.

These amendments do not provide for waivers in specified situations because waivers would make the application of the assessment fee inequitable to facilities. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 249L and 249M.

These amendments shall become effective on February 1, 2012.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36, Division II,** preamble, as follows:

PREAMBLE

These rules describe the nursing facility quality assurance assessment authorized by ~~2009~~ Iowa Code ~~Supplement~~ chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 2. Amend subrule 36.6(2) as follows:

36.6(2) *Assessment level.* Effective July 1, 2012, the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the state fiscal year.

a. ~~Nursing~~ Effective July 1, 2011, nursing facilities with ~~50~~ 46 or fewer licensed beds are required to pay a quality assurance assessment of $1 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

b. Nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of $1 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, continuing care retirement center designations as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

c. Nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of $1 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid enterprise as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

d. All other nursing facilities are required to pay a quality assurance assessment of $5.26 per non-Medicare patient day.

ITEM 3. Amend subrule 36.7(4) as follows:

36.7(4) A nursing facility that fails to pay the quality assurance assessment within the time frame specified above shall pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

a. If the ~~department determines that~~ facility substantiates good cause ~~is shown~~ beyond the facility's control for failure to comply with payment of the quality assurance assessment, the department shall waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" shall have the

same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

b. Requests for a good cause waiver must be submitted to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315, within 30 days of notice to the facility that the penalty is due.

ITEM 4. Amend **441—Chapter 36, Division II,** implementation sentence, as follows:

These rules are intended to implement ~~2009~~ Iowa Code ~~Supplement~~ chapter 249L.

ITEM 5. Amend **441—Chapter 36, Division III,** preamble, as follows:

PREAMBLE

These rules describe the hospital health care access assessment authorized by ~~2010~~ Iowa ~~Acts, Senate File 2388, enacted by the Eighty-third General Assembly~~ Code chapter 249M. The rules explain how the assessment is determined and paid.

ITEM 6. Strike the parenthetical implementation "(83GA,SF2388)" in rules **441—36.10(83GA,SF2388)** to **441—36.12(83GA,SF2388)** and insert "(249M)" in lieu thereof.

ITEM 7. Amend **441—Chapter 36, Division III,** implementation sentence, as follows:

These rules are intended to implement ~~2010~~ Iowa ~~Acts, Senate File 2388~~ Code chapter 249M.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/30/11.